

(1951) 01 PAT CK 0014

In the Patna High Court

Case No : Criminal Miscellaneous No's. 623, 624, 636, 652, 661, 663, 664, 669 and 687 of 1950

Madan Lal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-01-1951

Acts Referred:

Constitution of India, 1950 — Article 22
Preventive Detention Act, 1950 — Section 3(1)

Citation : AIR 1951 Patna 153

Hon'ble Judges : Narayan, J; Das, J

Bench : Division Bench

Advocate : Baldeo Sahay and Nandlal Untwalia, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Narayan, J.—These are applications u/s 491, Criminal P. G. for securing the release of persons who have been detained under orders which purport to be orders under Clause (iii) of Section 3 (1) (a), Preventive Detention Act 1950 (Act IV [4] of 1950). With regard to each of the detenus by or on whose behalf these applications have been filed the State Govt. feel satisfied that if he is allowed to remain at large, he will indulge in activities to the prejudice of the maintenance of supplies & services essential to the community & it is therefore that their detention has been ordered. The case of each of these detenus will be separately dealt with, & we have to examine the grounds of detention served on each of them. But before I take up the case of each & every detenu for a separate treatment it is necessary for me to refer to the questions of law that are common to all or some of these applications. The first important contention is that the alleged activities of these applicants do not attract the operation of Clause (iii) of Sub-section (1) (a) of Section 3, Preventive Detention Act, & that this provision of law was not intended to cover a case of this nature. The second important contention which has been urged on behalf of those detenus against whom

prosecutions were started u/s 7, Essential Supplies (Temporary Powers) Act, 1946, is that their detentions are mala fide inasmuch as the State Govt. having found that the evidence against them was too weak to support a prosecution passed orders for their detention applying Clause (iii) of Section 3 (1) (a), Preventive Detention Act. On behalf of those detenus against whom no prosecutions were started it is contended that when they could be prosecuted on the facts alleged it was not open to the State Govt. to detain them according to the provisions of the Preventive Detention Act on those very facts. And on behalf of those detenus against whom prosecutions were pending on the day the orders for their detention were passed, it is con-tended that it was wrong for the State Govt. to detain them while the prosecutions were pending.

2. So far as this Court is concerned, the first point now stands concluded by our recent decision in *Dayanand Modi v. State of Bihar*, the judgment of which was delivered on 5-1-1951. My learned brother has exhaustively dealt with the question, & I have agreed with him in overruling the contention that such activities do not attract) the operation of Clause (iii) of Section 3 (1) (a), Preventive Detention Act. In Section 3 not only the word "supplies" but also the word "services" has been used, & as pointed out by my learned brother in his judgment in the cases of *Dayanand Modi & others*, a supply of food or cloth which is essential to the community has a service aspect as well. In my opinion, the learned counsel were wrong in interpreting the word "service" so narrowly as they did. The dictionary meaning of the word "service" has to be appreciated, & according to the *New English Dictionary*, edited by Sir James Murray, LL. D., (Oxford publication), one of the meanings given to the word "service" is the act of waiting at table or dishing of food & also the manner in which this is done. The use of the word "maintenance" in Clause (iii) of Section 3 (1) (a) of the Act has also to be appreciated, & it need hardly be pointed out that acts of blackmarketing or hoarding must affect the maintenance of supply & service essential to the community. The several entries in the Legislative List have never been regarded as water-tight compartments, & a particular act can be covered by more than one item in those lists. The first important contention on behalf of these detenus must, therefore, be now rejected as untenable.

3. The second point is also now concluded because of our decision in the case of *Dayanand Modi & others* & also in the cases of *Subodh Kumar Singh & Kishori Prasanna Sinha*, Cri. Misc. Nos. 626 & 627 of 1950 decided by us on 21-12-1950. It is not a rule o? law that when a person is accused of an offence the only alternative is to prosecute him, & there is no legal authority to detain him. As was pointed out by Lokur J. in *Gajanan Krishna v. Emperor* AIR (32) 1945:

"for conviction the Court has to be convinced of the guilt of the accused, & the benefit of a reasonable doubt goes to the accused. But for the purpose of detention it la enough if the Govt. or any officer duly empowered Is reasonably satisfied of the necessity of his detention."

Public safety & the maintence of public order are the paramount concern of a

civilised Govt. & the power of the State Govt. to order the detention of a man is not lost if the Govt. are not in possession of sufficient evidence to secure his conviction. As was pointed out by his Lordship the Chief Justice of the Supreme Court in *A. K. Gopalan v. State of Madras* 1950 13 SCJ 174 , for preventive detention action can be taken on good suspicion, & that it is a subjective test based on cumulative effect of different actions, perhaps spread over a considerable period. His Lordship further pointed out that the very purpose of preventive detention is to prevent the individual from acting in a particular way & for achieving a particular object. In *Basant Chandra Ghose v. Emperor* 1945 7 FCR 81 Sir Patrick Spens C.J. who delivered the judgment of the Federal Court pointed out that the decision of this Court in *Kamla Kant v. Emperor*, 23 Pat. 252--a decision on which reliance has been placed before us by the appellants' counsel--cannot be understood as laying down any general proposition of law that when a man is accused on some definite & specific charge, there cannot be any order of detention passed against him before he is tried of a charge & his guilt or innocence finally determined. Even in that case Shearer J. had observed that he should not be understood to say that where a man has been acquitted, there cannot be an order of detention against him. It is not necessary for the executive authority to make a choice between prosecution & detention at the earliest stage, & it is not the law that unless such a choice is made the order of detention should be regarded as invalid. What is required is that the executive authority should act according to law, reasonably & in good faith, & as pointed out by my learned brother in the cases of *Subodh Kumar Singh & Kishori Prasanna Sinha*, Cri. Misc Nos. 626 and 627 of 1950 in all cases it is a question of fact whether the order of detention is mala fide or not.

4. I would now deal with each of these cases separately.

5. Criminal Misc. No. 623 of 1950--The applicant of this case is the sole proprietor of a firm known as Jagannath Madanlal which carries on cloth business in the town of Muzaffarpur. On 4-10-1950 the petitioner's shop was raided by police officers & there was a check & verification of the stock kept in the shop with the help of the entries in the stock register. A shortage of 56 1/2 pairs of dhotis & saris was found, & it was further found that the stock register contained no entry with regard to 5 bales of cloth each containing 190 pairs. The Sub-Inspector in charge of the Muzaffarpur town police station submitted a report against this detenu on 10-10-1950 & the first information report was instituted on the basis of that report. The petitioner was arrested on that very date. He was refused bail by the Magistrate as well as by the Session J. This Court by its order dated 3-11-1950 granted him bail, but on 4-11-1950 & before he could be released on bail, he was served with an order of the State Govt. dated 31-10-1950 which directed that he be detained for having acted in a manner prejudicial to the maintenance of supplies & services essential to the community. The grounds of detention were served on the detenu on 17-11-1950. The special grounds mentioned in the order of the Govt. dated 15-11-1950, in which the grounds have been disclosed, are that when the accounts & the stock of this

detenu were checked on 4-10-1951, 5 bales of saris & dhotis were found in excess, & that the account further disclosed a shortage of 561/2 pairs of saris & dhotis. It is further stated in the grounds that though from the accounts it appears that on 9-9-1950 762 pairs of dhotis & saris had been sold, there was an entry of that date indicating the sale of 808 pairs of saris & dhotis. The explanation offered by the detenu with regard to the excess of 5 bales is that these bales of cloth had been sold though they could not be removed from the premises of the petitioner, because the purchasers had not made payment & transport facilities were not available to them. And the explanation offered for the other discrepancy is that clerical mistakes had been made in making the entries. It is stated that on 9-9-1950 & 30-9-1950 there were sales of 762 pairs & 891 pairs, respectively, but by mistake an entry indicating the sale of 808 pairs was made on the former date & an entry indicating the sale of 791 pairs was made on the latter date. And in this way the detenu explains the Shortage of 54 pairs. The explanations, in my opinion, are not such as can be easily accepted. If the 5 bales of cloth had been sold on credit, an entry with regard to these sales could be made in the stock register, & it could be noted in the stock register that these sales had not been made for cash price. Even in the affidavit that has been filed by the detenu, it is stated that one of the credit memo, had not been signed. The facts mentioned in the grounds did exist, & if two inferences including the one that was drawn by the State Govt. are possible on Ghose facts, it is not open to us to say that that particular inference should not have been drawn by the State Govt. This is not a case in which it can be held that the affidavit filed by the detenu discloses such strong circumstances as can show that the alleged facts or grounds are not in existence. It was pointed out by the Federal Court in *Machindar Shivaji v. The King* 1949 11 FCR 827 that the responsibility for making a detention order rests on the provincial executive & that it would be a serious derogation from that responsibility if the Court were to substitute its judgment for the satisfaction of the executive authority &, to that end, undertake an investigation of the sufficiency of the materials on which such satisfaction was grounded. A preventive detention as pointed out by his Lordship Patanjali Sastri J. in *A. K. Gopalan v. State of Madras* 1950 13 SCJ 174, is a purely precautionary measure which must necessarily proceed in all cases, to some extent, on suspic on or anticipation as distinct from proof (per Lord Atkinson in *Rex v. Halliday* (1917) AC 260. We can in no case undertake as investigation as to the truth or otherwise of the materials on which the satisfaction of the executive authority is grounded. The facts alleged have to be taken to be correct & it will not be a ground for interference if the detenu merely puts forward a counter-version. Putting a counter-version is not the same thing as placing circumstances which can go to establish that the alleged facts or grounds are non est. And it cannot be said in this case that the affidavit discloses circumstances which go to indicate, beyond any reasonable doubt, that the alleged facts or grounds are non est. This is certainly a case in which it can be said on behalf of the State Govt. that their satisfaction is grounded on materials which are of rationally probative value. In this case some explanations have been

offered, which cannot be taken to be correct without a proper enquiry, & no enquiry by us is possible or permissible. I, therefore, see no reason to interfere with the detention order in this case. The case started against him u/s 7, Essential Supplies Act, has now been withdrawn. [Then his Lordship considered the cases of detenus separately & in detail in Cri. Misc. Nos. 624, 652, 661, 669, 663, 664, 636 & 687 of 1950 & came to the conclusion that the orders of detention passed cannot be interfered with.] My conclusion, therefore, is that these applications are not fit to succeed. The applications are dismissed.

Das J.

6. (Cri. Misc. No. 623 of 1950 & batch.) I agree to the orders proposed by my learned brother in these cases. I wish to add a few words only.

7. First, as to the question whether activity like hoarding or black-marketing comes within Clause (iii) of Section 3 (1) (a), Preventive Detention Act, I expressed myself fully in the judgment delivered on 5-1-1951, referred to by my learned brother. The words "hoarding" & "black-marketing" have a definite meaning in the context of a system of controls, such as will be found in the Foodgrains Control Order, the Cloth & Yarn Control Order & other Control Orders of a similar nature. The maintenance of supplies of food & cloth depends on this system of controls, & anybody who evades the Control Orders by hoarding (e. g. secreting part of the stock by making false entries in the stock register, or showing fictitious sales, etc.) or blackmarketing (e. g. selling at a rate higher than the controlled rate) clearly acts in a manner which directly jeopardises the maintenance of supplies & services essential to the community. If the State Govt. have materials of a rationally probative value on which they are satisfied that a person is likely to act in that manner & to prevent him from acting in that manner it is necessary to pass an order of detention, they have the power to make the order u/s 3 (1) (a) (iii), Detention Act. Therefore, it is necessary to explain clearly, & thereby avoid the possibility of any misunderstanding, as to why we have interfered in some cases & not in others. The orders of detention are made on certain grounds, which must be communicated to the detenus (Clause (5) of Article 22 of the Constitution). The grounds, again, may be based on facts, which may or may not be disclosed, it being open to the detaining authority not to disclose facts which it considers to be against the public interest to disclose (Clause (6) of Article 22 of the Constitution). But I take it that the facts, so far as they are disclosed, must relate to & be the foundation on which the grounds rest.

8. Now, the question is how far these grounds or facts can be examined by us. It is, I think, well settled that the grounds can be examined to see if the mandatory provisions of Clause (5) of Article 22 of the Constitution have been complied with, viz. (1) that they have been communicated as soon as may be; & (2) they give definite & enough information so as to afford an opportunity of making a representation to the detenu. Secondly, the grounds or facts (materials on which the detaining authority says it has acted) can be examined to see if they are

relevant to the object of detention & have a rationally probative value. They can also be examined, if the question of mala fides is raised, the onus on that question being heavy on the detenu. The detenu may, possibly in rare cases, show that the order of detention was made not on the grounds given, but for some other purpose.

9. We have had three kinds of affidavits filed on behalf of the detenus: one kind consisted of a mere denial of the grounds or facts alleged; the second kind consisted of an attempted explanation of the facts alleged, the truth of the explanation depending on credibility of evidence; & the third . kind disclosed circumstances which rendered the grounds, or the facts on which the grounds were founded, completely non-existent; that is, inaccurate on the face of them, without the necessity, & independent of the question, of any evidence. It is in this last kind of cases that we have interfered, on the ground that the order is not bona fide. The first two kinds of cases are those in which, I think, the Advisory Board is the proper authority to consider the denial or the explanation. It is not always easy to appreciate the distinction between the second & third class of cases: the distinction appears to be very thin sometimes, but all the same it is appreciable. Take, for example, the cases where a detenu says that there was no shortage; or that there was miscalculation; or that he has nothing to do with the firm. But the grounds state that there was shortage; or that there was verification or that the detenu was one of the proprietors or partners of the firm. We have taken these to be cases where the truth or otherwise of the explanation given depends on credibility of evidence--a matter not for us to consider & determine. But where the detenu shows that the stock register was not with him but with, an officer of the State & yet the ground given is-that the register was not duly entered or that there was a discrepancy between the stock as shown in the register & as verified, we held that-the ground was inaccurate on the face of it, &, therefore, had no existence in fact. How can a register be entered, if it is in possession of somebody else? Clearly enough, no evidence is required in such a case. Therefore, when it is stated that this Court cannot question the correctness of the grounds, & there are decisions which have said that, the point to be remembered is that an investigation into the correctness or otherwise of the grounds, depending as it does on the believability of evidence, cannot be undertaken by us; because it is not our satisfaction which is a condition precedent to the validity of the order but the satisfaction of the State Govt. In such cases, whether there is an affidavit in reply or not we are powerless to interfere.

10. It is on this basis that we have declined to interfere in these cases, though in the case of the firm of Bindri Lal Mahabir Prasad all the four brothers have been detained for the activities of the firm. In some of these cases, the explanations given may turn out to be true, if an investigation is made. In Criminal Misc. No 624 of 1950 there is, I think, room for some doubt--firstly, because the Magistrate checking the stock himself made an error & secondly, there was very little shortage if the method of calculation (one pair as one unit) was as alleged.

But these are matters to be considered more properly by the Advisory Board, & however much one may wish to do so, it is clear that we cannot investigate into the truth or otherwise of these explanations in the way desired by the petitioners.